

# **State of Alaska FY2008 Governor's Operating Budget**

## **Department of Law Commercial and Fair Business Component Budget Summary**

## Component: Commercial and Fair Business

### Contribution to Department's Mission

The Commercial and Fair Business Section exercises the Attorney General's authority to enforce consumer protection and antitrust laws, which are aimed at protecting the public. This section also provides advice and representation to various departments and agencies of state government to assist them in the performance of their functions.

### Core Services

The Commercial and Fair Business Section has one of the more diverse law practices within the Department of Law. This section exercises the Attorney General's authority to enforce state consumer protection laws and antitrust laws. The section also provides representation, defense, advice, and counsel to 15 different divisions, commissions, and corporations within the Department of Revenue, the Department of Education and Early Development, and the Department of Commerce, Community, and Economic Development.

#### DEPARTMENT OF REVENUE:

##### Tax Division (non-oil and gas tax):

- Assist in negotiation of income and excise tax settlements.
- Defend appeals of tax assessments.
- Defend tax legislation against constitutional challenges.
- Appeal adverse decisions of the office of tax appeals to the superior court.
- Defend appeals or original actions on unclaimed property and provide legal advice concerning contracts with third parties for collection of unclaimed property.
- Defend appeals or original actions in enforcement of charitable gaming.
- Assist in drafting regulations.
- Prosecute non-participating tobacco manufacturers who violate the Master Settlement statute.

##### Permanent Fund Dividend Division:

- Defend appeals of dividend denials.
- Assist in drafting regulations.
- Defend division against original actions.

##### Alaska Housing Finance Corporation:

- Act as corporate counsel providing general advice on personnel, procurement, and contractual matters.
- Provide legal advice relating to AHFC's mortgage lending, public housing, construction and residential energy activities.
- Represent the corporation in litigation.

#### DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT:

##### Division of Insurance:

- Provide legal advice regarding insurance enforcement matters and represent the division in administrative adjudications involving insurance licensees.
- Assist the division in drafting regulations and legislation.
- Represent the director in court proceedings including administrative appeals of director decisions and insurance company liquidation proceedings.

##### Division of Corporations, Business, and Professional Licensing:

- Assist in negotiation of settlements or resolutions of license denials and license discipline.
- Defend appeals of license denial.
- Advise professional boards on legislative and constitutional limitations on their authority.
- Assist in drafting and repealing of regulations.
- Assist in drafting legislation.
- Assist in prosecuting actions to suspend tobacco endorsements of retailers for selling tobacco to minors.

##### Division of Investments:

Obtain judgments on defaulted loans.  
 Represent the division in admiralty cases brought in U.S. District Court.  
 Provide legal advice.

**Division of Banking and Securities:**

Defend appeals of cease and desist orders against securities brokers and salespeople.  
 Defend appeals of orders regarding proxy challenges.  
 Provide legal advice.

**Regulatory Commission of Alaska:**

Provide legal advice to the Commission about legal issues raised in filings and assist in the review of orders issued by the Commission.

**DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT**

**Alaska Student Loan Corporation:**

Act as corporate counsel providing general advice on personnel, procurement, and contractual matters.  
 Assist in drafting legislation and regulations.

**Alaska Commission on Postsecondary Education (ACPE):**

Provide legal advice relating to ACPE's student loans, collections, regulations and legislation.

**Professional Teaching Practices Commission:**

Provide advice and represent staff in teacher discipline matters.

**FY2008 Resources Allocated to Achieve Results**

**FY2008 Component Budget: \$4,985,700**

**Personnel:**

Full time	28
Part time	3
<b>Total</b>	<b>31</b>

## Key Component Challenges

### Consumer Protection

Alaska is a target state for many types of consumer fraud. Under the authority of the Consumer Protection Act (AS 45.50.471 et seq.), the Commercial and Fair Business Section investigates and brings enforcement action against businesses that engage in unfair or deceptive trade practices. Given the current funding and staffing level and the large areas of enforcement the office is responsible for, the section is still forced to turn away many legitimate cases of consumer fraud. Enforcement activities are directed to situations affecting a large number of consumers or involving large dollar amounts, and often there are not enough resources for even those cases.

The department has been able to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this component beginning in FY2000 and increased again for FY2004. To help ensure receipt of statutory designated program receipt resources, the department needs to maintain the section's participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers.

In addition to consumer protection and antitrust enforcement, the section also is responsible for the annual registration of approximately 2,000 charitable organizations, paid solicitors, and telemarketers. This is a challenging process that takes substantial section resources each year to complete. In 2004, the department was given authority to collect a fee for each registration, which helps offset the costs of the annual registration process.

## **Agency Work**

This section provides legal assistance to the Department of Revenue on all non-oil and gas tax types, including corporate income tax, tobacco tax, alcohol tax, motor fuel tax and an array of fish related taxes. These taxes contribute over \$100 million per year to the general fund. Effective enforcement and collection of these taxes is imperative to minimize taxpayers' efforts to evade payment of taxes. The section attorneys advising the Department Revenue spend substantial time researching and advising the department every year in its enforcement efforts. The Department of Revenue faces challenges particularly in the area of tobacco and fish related taxes, where efforts to avoid payment of taxes have recently become more pronounced. Moreover, some large corporations resist the combined apportionment method of corporate income taxation, which Alaska and many other states employ. This area of taxation generates litigation every year, which is handled by section attorneys.

Another area of work for the Department of Revenue involves its Gaming Unit that deals with charitable gaming issues. This unit is often presented with creative interpretations of the charitable gaming laws that require continuing legal analysis by section attorneys to ensure that the laws are consistently, correctly and fairly applied to the charitable gaming public.

The section also has seen an increased demand for legal services from the Department of Commerce, Community, and Economic Development related to securities, insurance regulation, and various grants administered or issued by the department and from the Regulatory Commission of Alaska (RCA). In response to this increase demand, two new attorney positions were added in FY2006. One position is funded by the Division of Insurance and is assigned to handle criminal prosecution of insurance fraud cases and to assist in the civil enforcement of the insurance laws. The second position is funded by the RCA and is assigned to assist in defending RCA orders on appeal, in giving legal advice to the commission with respect to adjudications and in drafting agency regulations.

## **Significant Changes in Results to be Delivered in FY2008**

Beginning in FY07, the section will see an increase in services to be delivered to the Department of Revenue as a result of the Cruise Ship Initiative that passed in 2006. This initiative increases the case load for Revenue's tax division by creating a new excise or head tax and making cruise ship income subject to the state's corporate income tax. The initiative also makes certain cruise ship gaming revenues taxable. Revenue will have to develop new regulations to flesh out the method for collecting the head and income taxes. The Commercial and Fair Business Section will be involved in the development of these regulations. The section also will be called on to help Revenue deal with audits and administrative hearings regarding the collection and enforcement of head taxes and corporate income taxes. Because of the international nature of the cruise ship companies their tax appeals will be very complex. The tax on gaming proceeds also will lead to additional audits and tax appeals and, therefore, increased section work. A new attorney position will be added to the section to deal with the work associated with the Cruise Ship Initiative. A budget increment in the amount of \$197,800 in general funds is requested to pay for these services.

## **Major Component Accomplishments in 2006**

Processed 353 consumer complaints, of those, 203 were resolved through the informal complaint process resulting in either direct or indirect assistance to consumers or referral to other appropriate state and federal agencies.

Participated in four multistate antitrust matters involving three pharmaceutical companies and a compact disc company that resulted in favorable settlements for Alaska including \$149,359 in receipts for consumer protection/antitrust enforcement efforts, as well as restitution to affected consumers or state agencies.

Successfully defended in state and federal courts challenges to the state's court-approved consent order allowing the \$75 million merger between Crowley Marine Services and Yukon Fuel Company, which affects the distribution of fuel in Western Alaska.

Participated in settlement of three multistate consumer protection cases in which the state obtained injunctive relief prohibiting conduct in violation of our consumer protection and antitrust statutes, restitution for consumers, and payments to the state of approximately \$365,000 for costs, attorneys fees and consumer protection enforcement.

Participated in or completed four consumer education initiatives related to predatory lending practices, senior fraud issues, cyber crime and internet fraud. These initiatives were accomplished through media outreach, targeted brochures, and presentations to consumer and industry groups. The Consumer Protection Unit also issued four consumer education press releases and posted 10 consumer alerts on the Consumer Protection web page containing warnings of scams and other relevant consumer information.

Collected \$77,689 in fees for registration of charitable organizations, paid solicitors, and telemarketers.

Successfully prosecuted or negotiated settlements in nine separate professional discipline and license denial cases, involving three physicians, one dentist, two certified nurse's aides, two social workers, and two real estate licensees. These cases resulted in revocation, suspension, voluntary surrender, or denial of licenses, imposition of civil fines, and/or a reprimand based on conduct involving failure to meet professional standards in the treatment of a patient; practicing medicine while license was lapsed; substance abuse; unprofessional conduct; unlawful prescribing practices; failure to disclose convictions; and false information on a renewal application.

Successfully defended on appeal to superior court three administrative decisions of state agencies. The superior court affirmed a decision of the Director of the Alaska Division of Insurance in which an insurance producer was found to have violated the insurance code by making various misrepresentations regarding the suitability of the insurance products he was selling and by failing to disclose the amount of commissions he received from these sales. In another case, the superior court affirmed the Board of Marine Pilot's decision to summarily suspend a marine pilot's license because of clear and immediate danger to the public. In the third case, the superior court affirmed the decision of the Commissioner of the Department of Commerce, Community and Economic Development to make permanent a cease and desist order issued to an architect for the unlicensed practice of engineering. None of these cases were appealed further.

Successfully prosecuted two insurance fraud cases resulting in felony convictions under plea agreements including orders for restitution of fraudulently obtained claim payments. These cases arose out of investigations by the Division of Insurance and involved claims for benefits under workers' compensation insurance policies.

Successfully litigated on behalf of the Division of Investments cases involving defaulted loans and obtained judgments totaling \$648,930.88 of which \$199,965.68 has been collected. Also, successfully collected \$13,834.99 on behalf of the Division of Investments in vessel foreclosure matters from 11 permanent fund dividend garnishments or assignments and two wage garnishments.

Successfully collected on behalf of the Department of Revenue \$52,975 in various fish taxes from a fish company in bankruptcy. Successfully prosecuted 39 forcible entry and detainer actions against tenants in public housing on behalf of Alaska Housing Finance Corporation. The evictions in these cases are limited to cases where there is actual good cause. The good cause in these cases included nonpayment of rent, breach of peaceful enjoyment or excessive noise, serious damage to property, failure to pay utilities, and public housing fraud or failure to report income and household composition. The section also successfully defended Alaska Housing Finance Corporation against three HUD Fair Housing Complaints.

## **Statutory and Regulatory Authority**

No statutes and regulations.

Contact Information
<p><b>Contact:</b> Signe Andersen, Chief Assistant Attorney General <b>Phone:</b> (907) 269-5100 <b>Fax:</b> (907) 278-4683 <b>E-mail:</b> Signe_Andersen@law.state.ak.us</p>

### Commercial and Fair Business Component Financial Summary

*All dollars shown in thousands*

	FY2006 Actuals	FY2007 Management Plan	FY2008 Governor
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	3,080.4	2,911.9	3,508.9
72000 Travel	31.9	29.2	30.2
73000 Services	660.0	1,321.8	1,337.3
74000 Commodities	47.0	81.1	83.9
75000 Capital Outlay	17.2	17.1	25.4
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
<b>Expenditure Totals</b>	<b>3,836.5</b>	<b>4,361.1</b>	<b>4,985.7</b>
<b>Funding Sources:</b>			
1004 General Fund Receipts	1,167.4	902.7	1,469.8
1005 General Fund/Program Receipts	0.0	50.0	50.0
1007 Inter-Agency Receipts	2,364.2	2,727.6	2,730.4
1108 Statutory Designated Program Receipts	304.9	680.8	735.5
<b>Funding Totals</b>	<b>3,836.5</b>	<b>4,361.1</b>	<b>4,985.7</b>

### Estimated Revenue Collections

Description	Master Revenue Account	FY2006 Actuals	FY2007 Management Plan	FY2008 Governor
<b>Unrestricted Revenues</b>				
None.		0.0	0.0	0.0
<b>Unrestricted Total</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Restricted Revenues</b>				
Interagency Receipts	51015	2,364.2	2,727.6	2,730.4
General Fund Program Receipts	51060	0.0	50.0	50.0
Statutory Designated Program Receipts	51063	304.9	680.8	735.5
<b>Restricted Total</b>		<b>2,669.1</b>	<b>3,458.4</b>	<b>3,515.9</b>
<b>Total Estimated Revenues</b>		<b>2,669.1</b>	<b>3,458.4</b>	<b>3,515.9</b>

**Summary of Component Budget Changes  
From FY2007 Management Plan to FY2008 Governor**

*All dollars shown in thousands*

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
<b>FY2007 Management Plan</b>	<b>952.7</b>	<b>0.0</b>	<b>3,408.4</b>	<b>4,361.1</b>
<b>Adjustments which will continue current level of service:</b>				
-FY 08 Health Insurance Increases for Exempt Employees	0.4	0.0	3.4	3.8
-Fund Source Adjustment for Retirement Systems Increases	319.7	0.0	-319.7	0.0
<b>Proposed budget increases:</b>				
-New Attorney V - Cruise Ship Initiative	197.8	0.0	0.0	197.8
-FY 08 Retirement Systems Rate Increases	49.2	0.0	373.8	423.0
<b>FY2008 Governor</b>	<b>1,519.8</b>	<b>0.0</b>	<b>3,465.9</b>	<b>4,985.7</b>



**Commercial and Fair Business  
Personal Services Information**

Authorized Positions			Personal Services Costs	
	<u>FY2007</u> <u>Management</u> <u>Plan</u>	<u>FY2008</u> <u>Governor</u>		
Full-time	27	28	Annual Salaries	2,141,979
Part-time	3	3	Premium Pay	1,693
Nonpermanent	0	0	Annual Benefits	1,440,600
			<i>Less 2.10% Vacancy Factor</i>	<i>(75,372)</i>
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>30</b>	<b>31</b>	<b>Total Personal Services</b>	<b>3,508,900</b>

**Position Classification Summary**

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	1	0	2
Assoc Attorney II	1	0	0	0	1
Attorney III	2	0	1	0	3
Attorney IV	10	0	3	0	13
Attorney V	1	0	2	0	3
Attorney VI	1	0	0	0	1
Law Office Assistant I	3	0	0	0	3
Law Office Assistant II	2	0	1	0	3
Paralegal II	2	0	0	0	2
<b>Totals</b>	<b>23</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>31</b>